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6  
7 IN THE UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,  
10 Plaintiff,

11 v.

12 PAO VANG,  
a/k/a "CLOWNSY,"  
13 JHOVANNY DELGADO-MARCELO,  
a/k/a "JHIO," and  
14 JOHNNY XIONG,  
15 Defendants.

CASE NO. 1:20-CR-116-NONE-SKO  
STIPULATION TO CONTINUE

16  
17 This case is set for an arraignment on February 8, 2021, which the parties stipulate to continue to  
18 April 26, 2021, for the reasons set forth below.

19 On March 17, 2020, this Court issued General Order 611, which suspends all jury trials in the  
20 Eastern District of California scheduled to commence before May 1, 2020. This General Order was  
21 entered to address public health concerns related to COVID-19.

22 Although the General Order addresses the district-wide health concern, the Supreme Court has  
23 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
24 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.  
25 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no  
26 exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*  
27 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
28 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
3 and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances  
4 are excludable only if “the judge granted such continuance on the basis of his findings that the ends of  
5 justice served by taking such action outweigh the best interest of the public and the defendant in a  
6 speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets  
7 forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice  
8 served by the granting of such continuance outweigh the best interests of the public and the defendant in  
9 a speedy trial.” *Id.*

10 The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

19 In light of the societal context created by the foregoing, this Court should consider the following  
20 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
21 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date  
22 for the hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial  
23 continuance must be “specifically limited in time”).

## 24 STIPULATION

25 Plaintiff, United States of America, by and through its counsel of record, the United States  
26 Attorney for the Eastern District of California and the defendants, PAO VANG, a/k/a “CLOWNSY,”  
27 JHOVANNY DELGADO-MARCELO, a/k/a “JHIO,” and JOHNNY XIONG, by and through their  
28 counsel, hereby agree and stipulate to continue this matter until April 26, 2021.

The defendant also agrees to exclude for this period of time any time limits applicable under 18 U.S.C. § 3161. The parties agree that the continuance represents the reasonable time necessary for effective preparation of counsel. 18 U.S.C. § 3161(h)(7)(A)-(B)(iv). In support thereof, the parties stipulate that:

1. This matter is set for an arraignment on February 8, 2021.
2. The government has provided the defendants with discovery that includes audio files, video files, and numerous reports. The government also agreed to produce an index for those files to the defense. The defense is continuing to review those documents.
3. Due to the COVID-19 pandemic public health restrictions, as well as restrictions at Fresno County Jail, defense counsel have had limited access to their clients, and require additional time to discuss case matters with their clients.
4. Therefore, the parties agree that a continuance until April 26, 2021, is warranted because the defense needs time to review the discovery.
5. The parties stipulate that the period of time from February 8, 2021, through April 26, 2021, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv) because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO STIPULATED.

Dated: February 2, 2021

MCGREGOR W. SCOTT  
United States Attorney

By: /s/ KATHERINE E. SCHUH  
KATHERINE E. SCHUH  
Assistant United States Attorney

Dated: February 2, 2021

/s/ Charles Lee  
Attorney for Defendant  
JHOVANNY DELGADO-MARCELO

Dated: February 2, 2021

/s/ Robert Lamanuzzi  
Attorney for Defendant

JOHNNY XIONG

Dated: February 2, 2021

/s/ Harry Drandell\_\_\_\_\_  
Attorney for Defendant  
PAO VANG

**ORDER**

IT IS HEREBY ORDERED that the February 8, 2021 arraignment in this matter is continued to April 26, 2021, at 2 pm.

IT IS FURTHER ORDERED THAT the period of time from February 8, 2021, through April 26, 2021, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A), 3161(h)(7)(B)(i) and (iv), because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendants in a speedy trial.

IT IS SO ORDERED.

Dated: February 5, 2021

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE